

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No.

MANUEL S. MADRUGA, PETITIONER,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
IN AND FOR THE COUNTY OF SAN DIEGO

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT  
OF THE STATE OF CALIFORNIA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAR. 13, 1953.

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[fol. 1]

[File endorsement omitted]

**SUMMONS ISSUED**

**IN THE SUPERIOR COURT OF THE STATE OF  
CALIFORNIA IN AND FOR THE COUNTY OF SAN  
DIEGO**

**No. 173337**

**EDWARD X. MADRUGA, JOE B. SILVEIRA, ANTHONY D. MADRUGA, JOSEPH MADRUGA, JOSEPH BOGDANOVICH, NICHOLAS TRUTANICH, JOHN TRIPPS, AND VINCENT GANN, Plaintiffs,**

**vs.**

**MANUEL S. MADRUGA, Defendant.**

**COMPLAINT FOR PARTITION—Filed May 29, 1952**

Come now the plaintiffs above named and for cause of action allege as follows:

**I**

That plaintiffs and defendant are co-owners of the Oil Screw Vessel Liberty, Official No. 256 332, which said vessel is now docked in the City of San Diego, County of San Diego, State of California, the home port of said vessel being San Diego, California.

**II**

That the parties to this action own undivided interests in said vessel in the following percentages:

Edward X. Madruga	30%	Joe B. Silveira	30%
Anthony D. Madruga	5%	Joseph Madruga	5%
Manuel S. Madruga	15%	Joseph Bogdanovich	3%
Nicholas Trutanich	3½%	John Tripps	3½%
Vincent Gann	5%		

[fol. 2]

**III**

That there are no liens or encumbrances against said vessel and that no person other than the plaintiffs and defendant are interested in said vessel as owners or otherwise.



## IV

That the value of said vessel is in excess of \$3,000.00.

Wherefore, plaintiffs pray:

1. That the court order said vessel to be sold and the proceeds of said sale partitioned between the parties according to their respective interests in said vessel.

2. That plaintiffs be allowed their costs and reasonable attorney's fees.

3. And for such other and further relief as the Court may deem meet and equitable in the premises.

Luce, Forward, Kunzel & Scripps. By Fred Kunzel,  
Attorneys for Plaintiffs.

*Duly sworn to by Edward X. Madruga. Jurat omitted in printing.*

[fol. 3]

[File endorsement omitted]

IN SUPERIOR COURT OF SAN DIEGO COUNTY

[Title omitted]

Within demurrer this 18th day of June 1952.

Overruled—15 days to answer.

In Department No. 2 L. N. T.

DEMURRER AND ORDER OVERRULING SAME—Filed June 9, 1952

Comes now the defendant in the above entitled matter and demurs to plaintiff's complaint on the following grounds, to wit:

## I

That the court has no jurisdiction of the subject of the action.

## II

That the complaint does not state facts sufficient to constitute a cause of action.



## III

That the complaint is ambiguous in that it can not be ascertained therefrom what, if any dispute or controversy exists between the parties.

## IV

That the complaint is unintelligible in the same particulars in which it is ambiguous.

[fol. 4]

## V

That the said complaint is uncertain in the same particulars in which it is ambiguous and unintelligible.

Dated this 7th day of June, 1952.

Levenson, Levenson & Block. By Eli H. Levenson,  
Attorneys for Defendant.

[fol. 5]

## Points and Authorities

C.C.P. 430, Sub. Par. 1, Sub. Par. 6, 7, 8, and 9.

I, Eli H. Levenson, one of the attorneys for the above named defendant, do hereby certify that the above demurrer to plaintiff's complaint is not interposed for the purpose of delay and that in my opinion the issues therein raised are well taken in law.

Eli H. Levenson.

Proof of service [omitted in printing].

[fol. 6]

[File endorsement omitted]

IN SUPERIOR COURT OF SAN DIEGO COUNTY

[Title omitted]

ANSWER—Filed July 23, 1952

Comes now the defendant above named, and in answer to plaintiffs' complaint on file herein, admits, denies and alleges as follows:

## I

Admits each and every allegation contained in Paragraph

I.

## II

Admits each and every allegation contained in Paragraph II.

## III

Answering Paragraph III, this answering defendant does not have sufficient information, and basing his denial upon such lack of information, denies generally and specifically, each and every allegation contained in said paragraph III.

## IV

Admits each and every allegation contained in Paragraph IV.

[Vol. 7] And for a second, separate and distinct defense, this answering defendant admits, denies and alleges as follows:

### I

That said complainant seeks relief by having said vessel partitioned and sold, and the proceeds of said sale partitioned between the parties, according to their respective interests. That this court is without jurisdiction to grant such relief, in that said vessel is a certificated vessel, under the maritime laws of the United States, and that the District Court of the United States, sitting in Admiralty, is the only and proper court having jurisdiction to cause a partition of said vessel.

And for a third, separate and distinct defense, this answering defendant admits, denies and alleges as follows:

### I

That defendant has heretofore petitioned to the District Court of Appeal for a Writ of Prohibition to prohibit this court from proceeding on said complaint, for the reason that this court is without jurisdiction and that the United States District Court, sitting as a court in Admiralty, is the only and proper court having jurisdiction.

## II

That the District Court of Appeal of the State of California, in and for the Fourth Appellate District did, on the

3rd day of July, 1952, denied said petition for a writ of prohibition; that the order of denial by said District Court of Appeal of the State of California, in and for the Fourth Appellate District, is not now, and will not be final until the 3rd day of August, 1952. That when said order denying said petition becomes final, this defendant will present a petition for rehearing of said petition to the Supreme Court of the the State of California, on the grounds that the Superior Court of the State of California is without jurisdiction to partition a certificated vessel, and that the United [fol. 8] States District Court sitting as a court in Admiralty, is the only and proper court having jurisdiction to cause a partition of such a vessel.

Wherefore, defendant prays that plaintiffs take nothing by reason of their complaint on file herein, for costs of suit herein incurred, and for such other and further relief as to the court may seem meet and just in the premises.

Levenson, Levenson & Block. By Eli H. Levenson,  
Attorneys for Defendant.

Proof of service [omitted in printing].

[fol. 9] *Duly sworn to by Manuel S. Madruga. Jurat omitted in printing.*

[fol. 10] [File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF  
CALIFORNIA IN AND FOR THE FOURTH APPELLATE DISTRICT

No. 4C4521

MANUEL S. MADRUGA, Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE  
COUNTY OF SAN DIEGO, Respondent

RESPONDENT'S POINTS AND AUTHORITIES IN OPPOSITION TO  
PETITION FOR WRIT OF PROHIBITION—Filed June 30, 1952

The pending action in the Superior Court was filed to partition the vessel "Liberty" by a majority of the owners



of the vessel pursuant to Sections 753 to 801.15 of the California Code of Civil Procedure. The majority of the owners consists of all the owners with the exception of petitioner herein, who owns a 15% interest in the vessel.

The petition for writ of prohibition herein is sought upon the basis that a State Court does not have jurisdiction to partition a vessel. In support of this contention petitioner cites the case of *Fischer v. Carey*, 173 Cal. 185.

In the above cited case the appeal was from an order of the trial court appointing a receiver to operate the vessel upon the complaint of minority owners of the vessel. The order of the trial court appealed from appears at page 185 of the decision as follows:

[fol. 11] "to operate said vessel if it appears in the judgment of said receiver such operation can be done at a profit and to preserve the vessel, her earnings and appurtenances until the further order of the court."

The complaint prayed for an accounting for the appointment of a receiver, and for an order decreeing the sale of the vessel and a division of the proceeds ratably amongst the part owners. The Supreme Court reversed the order appointing the receiver and in so doing, the Court stated at page 198:

"... that the power of a state court does not go to the length here exercised, of appointing a receiver and decreeing a sale because of the differences over the management of the vessel which have sprung up between the legal owners of that vessel."

In our opinion the court reached the proper conclusion. Statements made by the court relative to partition are pure dictum inasmuch as the trial court made no order for partition. The court merely followed the ancient admiralty rule that the courts will not, upon petition of a minority owner, interfere with the management, control or operation of a vessel. The Admiralty Courts, so as to not allow a circumvention of the above rule, also have refused to partition a vessel on the petition of a minority owner and have stated that they would not partition except where the interests of the vessel are equal. The reason for this rule is that

where the interests are equal and there is disension between equal owners the vessel cannot be operated and therefore the court will partition to keep the vessel in operation.

"Cases of licitation or sale, for the purpose of partition, are also within the power of the American admiralty as they are of the European maritime courts, such jurisdiction being exercised only as between equal interests. A decree of partition or licitation cannot issue merely upon a libel *in rem*; it is essential that the co-owner be also sued and served *in personam*." 1 *Benedict on Admiralty* at page 158.

*The Red Wing*, 10 Fed. 2d 369:

"Inasmuch as Kordich and respondents are not co-partners or co-owners in the *Red Wing* in equal shares, the subject-matter of this proceeding is not within the [fol. 12] purview of admiralty, for the rule is generally and uniformly established by the Supreme Court that the jurisdiction of courts of admiralty in cases of part owners having unequal interests is not and never has been applied to direct a sale upon any dispute as to the trade and navigation of the ship. *The Steamboat Orleans*, 11 Pet. 182, 9 L. Ed. 677; *Coyne v. Caples* (D. C.), 5 F. 638."

The Court in the case of *Fischer v. Corey*, in its stated reasons for the decision, fell in error in three particulars; one, in the assumption that a partition action is *in rem*; second, that all actions pertaining to a vessel are *in rem*; and third, that all admiralty actions are *in rem*.

A partition action is not an action *in rem* unless it is a partition of real property and brought within the purview of Section 749.1 of the California Code of Civil Procedure. 40 Am. Jur. 112, Sec. 134:

"*Unknown Persons*.—The statutes of many of the states authorize the process in suits for partition to be directed to unknown owners or to all owners and claimants, known and unknown, in certain contingencies therein designated, and to be served by the publica-

tion thereof as of course notice requiring all persons to appear and disclose and assert their claims to the property. Wherever such statutes exist and have been complied with, the proceeding becomes one in rem, and is conclusive against all persons irrespective of the character or extent of their title."

An action in rem is where the object of the action is to determine the rights of the world to certain property. The distinction between an action in rem and an action in personam against a vessel is well stated by Judge Hughes in the case of *F. T. Howards v. Cloverport Foundry & Machine Company*, 237 U. S. 303 (303 S. Ct. 596, 59 L. Ed. 966), wherein it is stated:

"As the last point is plainly well taken, it is unnecessary to go further. It is well settled that in an action in personam the state court has jurisdiction to issue an auxiliary attachment against the vessel; and, whether or not the contract in suit be deemed to be of a maritime nature, it cannot be said that the state court transcended its authority. The proceeding in rem which is within the exclusive jurisdiction of admiralty is one essentially against the vessel itself as the debtor or offending thing—in which the vessel is itself 'seized and impleaded as the defendant, and is judged and sentenced accordingly.' By virtue of dominion over the thing all [fol. 13] persons interested in it are deemed to be parties to the suit; the decree binds all the world, and under it the property itself passes, and not merely the title or interest of a personal defendant."

See also *United States of Mexico v. Rusk*, 118 C. A. 21 at page 49.

It has never been held that a state court or an admiralty court, for that matter, lack jurisdiction to partition a vessel upon a request by the majority of the owners. Partition actions are favored in law and as such there exists no valid reason why an owner of a 15% interest in the vessel should be able to keep the owners of an 85% interest in



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the vessel from selling it if they feel that the reasons for the sale are valid.

40 Am. Jur. 3, Sec. 4:

*"Nature and Object.*—Partition is a right much favored, upon the ground that it not only secures peace, but promotes industry and enterprise. The rule of the civil as of the common law that no one should be compelled to hold property in common with another grew out of a purpose to prevent strife and disagreement. Additional reasons are found, however, in the more modern policy of facilitating the transmission of titles, and in the inconvenience of joint holding. Partition proceedings enable those who own property as joint tenants, coparceners, or tenants in common, to put an end to the tenancy so as to vest in each a sole estate in specific property or an allotment of the lands or tenements. It contemplates an absolute severance of the individual interests of each joint owner, and after partition, each has the right to enjoy his estate without supervision, let, or hindrance from the other. Unless this can be accomplished, then the joint estate ought to be sold, and the proceeds divided. Court should be, and are, adverse to any rule which will compel unwilling persons to use their property in common."

Dated this 30th day of June, 1952.

Respectfully submitted, Luce, Forward, Kunzel &  
Serippa, by Fred Kunzel, Attorneys for Respondent.

[fol. 14]      [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

PETITION FOR REHEARING—Filed August 9, 1952

To the Honorable Chief Justice and Associate Justices of  
the Supreme Court of the State of California:

The District Court of Appeal of the State of California, in and for the Fourth Appellate District, filed its opinion on the 3rd day of July, 1952, denying the petition of petitioner

hereln for a Writ of Prohibition. A copy of the order of said District Court of Appeal is attached hereto and made a part hereof, as though set forth at length.

### Preliminary Statement

This action was brought by plaintiffs, as co-owners of a certain vessel, to partition the same. Petitioner, one of the minority owners of said vessel, demurred to the complaint on the grounds that the Superior Court of the State of California was without jurisdiction to cause a partition of the vessel, and that the United States District Court, [fol 15] sitting in Admiralty, was the only and proper court having jurisdiction. Said demur-er was overruled and petitioner ordered to answer the complaint. A Petition for Writ of Prohibition was filed with the District Court of Appeal of the State of California, in and for the Fourth Appellate District, which petition was denied, and petitioner asks for a hearing by this Court by reason of said denial, on the following grounds:

1. To secure uniformity of the decision, and settlement of important questions of law in that this Honorable Court has heretofore held that an action for partition of a vessel seeking the appointment of a receiver and order decreeing the sale of a vessel and a ratable division of the proceeds, is not an action in which the state courts of California have jurisdiction, but that the jurisdiction of such an action lies in the Admiralty Courts of the United States.

That a copy of the Petition for Writ of Prohibition, as presented to the District Court of Appeal of the State of California, in and for the Fourth Appellate District, is attached hereto and made a part hereof, as though set forth at length.

Wherefore, appellant respectfully requests hearing in this Court of the above entitled matter.

Respectfully submitted, Levenson, Levenson & Block,  
by (S.) Eli H. Levenson, Attorneys for Appellant.

[f. 16]

[File endorsement omitted]

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE FOURTH APPELLATE DISTRICT

[Title omitted]

PETITION FOR WRIT OF PROHIBITION—Filed June 27, 1952

To the Honorable, the District Court of Appeal of the State  
of California, in and for the Fourth Appellate District:

The petition of Manuel S. Madruga respectfully shows:

I

That on or about the 29th day of May, 1952, a complaint was filed in the Superior Court of the State of California, in and for the County of San Diego, entitled, "Edward X. Madruga, Joe B. Silveira, Anthony D. Madruga, Joseph Madruga, Joseph Bogdanovich, Nicholas Trutanich, John Tripps, and Vincent Gann, Plaintiffs, vs. Manuel S. Madruga, Defendant, No. 173337, Complaint for Partition." That at said time the plaintiffs in said action caused summons to be issued, which summons directed the defendant, your petitioner herein, to appear in said action within ten days after service thereof. That a copy of said complaint so filed and summons issued are attached hereto respectively as "Exhibit A" and "Exhibit B", and incorporated herein as though set forth at length.

II

That said complaint purports to set forth a cause of action against petitioner for the purpose of partitioning a certificated vessel, as more particularly set forth in said complaint, and the plaintiffs in said action seek relief in said complaint by having said vessel sold, and the proceeds of said sale partitioned between the parties, according to their respective interests in said vessel.

III

That in pursuance of said summons, petitioner did file with the Superior Court of the State of California, in and



for the County of San Diego, a Demurrer to said complaint on the following grounds, to wit:

(A) That the court has no jurisdiction of the subject of the action.

(B) That the complaint does not state facts sufficient to constitute a cause of action.

(C) That the complaint is ambiguous in that it cannot be ascertained therefrom what, if any dispute or controversy exists between the parties.

(D) That the complaint is unintelligible in the same particulars in which it is ambiguous.

(E) That the said complaint is uncertain in the same particulars in which it is ambiguous and unintelligible.

That at the hearing of said Demurrer on Wednesday, June 18, 1952, petitioner, through his counsel, did attend and appear before the Superior Court of the State of California, in and for the County of San Diego, Department Two thereof, and did present said demurrer, and did then [fol. 18] and there object to the jurisdiction of said court to entertain said action, upon the grounds that the complaint sets forth on its face that the vessel sought to be partitioned is a certificated vessel under the maritime laws of the United States and that the District Court of the United States, sitting in admiralty, was the only and proper court having jurisdiction to cause a partition of such a vessel.

#### IV

That the said court notwithstanding the objections set forth by petitioner, by way of the Demurrer presented, did then and there overrule said Demurrer, and refuse to dismiss the said action, and did then and there decide that the Superior Court of the State of California, in and for the County of San Diego had jurisdiction of the subject matter of said action, and allowed petitioner a period of fifteen days within which to file an answer to the complaint of plaintiffs in said action, and petitioner is informed and believes that unless an answer is filed in accordance with the ruling of the court, as set forth above, said court will proceed to try the same and render judgment by default against

your petitioner, unless this court, by its Writ of Prohibition shall otherwise order.

V

That petitioner has no speedy or adequate remedy by appeal or otherwise in that if said action proceeds to trial and judgment of partition ordered, said vessel will be sold, to the detriment of petitioner, and an appeal or other remedy from said judgment will not provide an adequate remedy to petitioner to protect his interests in said vessel.

Wherefore, your petitioner prays that this court issue its Writ of Prohibition, commanding said court to desist from any further proceedings in said action.

Levenson, Levenson & Block, by Eli H. Levenson,  
Attorneys for Petitioner.

[fol. 19] *Duly sworn to by Eli H. Levenson. Jurat omitted in printing.*

[fols. 20-21] Exhibit "A"—Complaint for Partition. Omitted. Printed side page 1 ante.

### EXHIBIT B

[fol. 22] IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SAN DIEGO

EDWARD X. MADRUGA, JOE B. SILVEIRA, ANTHONY D. MADRUGA,  
JOSEPH MADRUGA, JOSEPH BOGDANOVICH, NICHOLAS TEUTANICH, JOHN TRIPPS AND VINCENT GANN, Plaintiffs,

vs.

MANUEL S. MADRUGA, Defendant.

No. 173337

### SUMMONS ON COMPLAINT FOR PARTITION OF PERSONAL PROPERTY

Action brought in the Superior Court of the State of California in and for the County of San Diego, and the Com-

plaint filed in said County of San Diego, in the office of the Clerk of the Superior Court.

The people of the State of California send greeting:

To: Manuel S. Madruga

You are hereby directed to appear and answer to a Complaint in an action entitled as above, brought against you in the Superior Court of the State of California, in and for the County of San Diego, within ten days after the service on you of this summons—if served within this County; or within thirty day if served elsewhere.

It is sought by said complaint filed in said action to have the following described property partitioned, to wit:

That certain Oil Screw vessel named Liberty, Official No. 256 332, built at Tacoma, Washington, in 1948, with her home port at San Diego, California.

[fol. 23] And you are hereby notified that unless you appear and answer as above required, the said plaintiffs will take judgment for any money or damages demanded in the Complaint, as arising upon contract or they will apply to the Court for any other relief demanded in the Complaint.

Given under my hand and seal of the Superior Court of the County of San Diego, State of California this 29th day of May, 1952 By T. H. Sexton, Clerk, R. W. Candee, Deputy.

Luce, Forward, Kunzel & Scripps, Attorneys for Plaintiffs.

Appearance: A defendant appears in an action when he answers, demurs, or gives the plaintiff written notice of appearance. The appearance must be in writing, accompanied by the necessary fee and filed with the Clerk.



[fol. 24] IN THE DISTRICT COURT OF APPEAL OF THE STATE  
CALIFORNIA IN AND FOR THE FOURTH APPELLATE DISTRICT

[Title omitted]

ORDER DENYING PETITION FOR WRIT OF PROHIBITION—Filed  
July 3, 1952

By the Court:

The Petition for Writ of Prohibition is denied.

[File endorsement omitted.]

Dated July 3, 1952.

Barnard, P. J.

[fol. 25] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR HEAR-  
ING—Filed June 27, 1952

## I

An action for partition of a vessel seeking the appointment; of a receiver and an order decreeing the sale of the vessel and a ratable division of the proceeds is in action in which the state courts have no jurisdiction, but that the jurisdiction of such an action lies in the Admiralty Court of the United States.

Fischer v. Carey, et al, 173 Cal., 185  
I Benedict on Admiralty, 157-58, Sec. 74

## II

An action for partition is an action in rem against the vessel, and proper jurisdiction of such an action is therefore in the Admiralty Courts of the United States, and not in the state courts.

Fischer v. Carey, et al, 173 Cal., 185  
Higgins v. Eva, 204 Cal., 231.

[fol. 26]

III

A vessel belonging to several persons not partners, in which the several interested persons differ as to its use or repair, is a controversy which may be determined by any court of competent jurisdiction.

Harbors and Navigation Code, Sec. 403.

Levenson, Levenson & Block. By Eli H. Levenson,  
Attorneys for Petitioner.

[fol. 27]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
IN BANK

MADRUGA

v.

SUPERIOR COURT, SAN DIEGO COUNTY.

ORDER GRANTING HEARING AFTER JUDGMENT BY DISTRICT  
COURT OF APPEAL—Filed August 28, 1952

Petitioner's application for hearing granted and cause transferred to this Court.

Let an alternative writ of prohibition issue, to be heard before this Court at its courtroom in *Los Angeles*, on *October 2nd 1952*, at 9:30 A. M.

The alternative writ is to be issued served and filed on or before *September 3, 1952*.

The written return to the writ is to be served and filed on or before *September 15, 1952*.

Gibson, Chief Justice; Shenk, Justice; Carter, Justice; Traynor, Justice; Schauer, Justice; Spence, Justice.

[fol. 28]

[File endorsement omitted]

## IN SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

No. LA 22511

ALTERNATIVE WRIT OF PROHIBITION—Filed September 4, 1952

The people of the State of California, to the Superior Court of the State of California, in and for the County of San Diego, Greetings:

Whereas, Manuel S. Madruga did represent to this court by his Petition for Hearing and by his verified Petition for a Writ of Prohibition to the District Court of Appeal, Fourth Appellate District, a copy of which was attached to said Petition for hearing in this court, that the Superior Court of the State of California, in and for the county of San Diego, threatens to and intends to, and will unless restrained and prohibited from so doing, entertain, pass upon, proceed with, hear and try the action as prayed for in the complaint of the plaintiffs, Edward X. Madruga, Joe B. Silveira, Anthony D. Madruga, Joseph Madruga, Joseph Bogdanovich, Nicholas Trutanich, John Trippa, and Vincent Gann, on file in proceeding No. 173337, now pending in the Superior Court of the State of California, in and for the County of San Diego, as will more fully appear from said petition of Manuel S. Madruga, on file with said District [fol. 29] Court of Appeal, Fourth Appellate District and transferred to this court, and threatens to, and may cause the partition of a certificated vessel, and cause to have said vessel sold and the proceeds of said sale partitioned between the parties, according to their respective interests in said vessel, and

Whereas, it has been further made to appear that said District Court of Appeal, Fourth Appellate District, did, on the 3rd day of July, 1952, deny the petition of said Manuel S. Madruga for a Writ of Prohibition and a Petition for Hearing thereafter filed with this court, which Petition has been granted.

Nevertheless you, the said Superior Court of the State of California, in and for the County of San Diego, well knowing



the premises, have proceeded and are proceeding against the laws and customs of our said state and to the manifest damage, prejudice and grievance of said Manuel S. Madruga, the petitioner herein, and to the property and property rights of said Manuel S. Madruga.

We therefore do command you, the said Superior Court of the State of California, in and for the County of San Diego, that you desist and refrain from taking any further proceedings based upon the allegations of the plaintiffs, Edward X. Madruga, Joe B. Silveira, Anthony D. Madruga, Joseph Madruga, Joseph Bogdanovich, Nicholas Trutanich, John Trippa, and Vincent Gann, in proceeding No. 173337, now pending in the Superior Court of the State of California, in and for the County of San Diego, and that you do not hear, determine, pass upon, try or decide any proceeding based upon the allegations of said complaint or any relief prayed for in said complaint until further order of this court, and that you, the Superior Court of the State of California, in and for the County of San Diego, show cause before our Supreme Court of the State of California in Bank, on the 2nd day of October, 1952, at the hour of 9:30 o'clock A. M. of said day, in the Courtroom of said Supreme [fol. 36] Court of the State of California in the State Building in the City and County of Los Angeles, State of California, why you should not be absolutely and forever restrained and prohibited from taking any further or other proceedings upon the allegations or prayer of the complaint of said Edward X. Madruga, Joe B. Silveira, Anthony D. Madruga, Joseph Madruga, Joseph Bogdanovich, Nicholas Trutanich, John Trippa, and Vincent Gann, on file in said proceeding No. 173337, now pending in the Superior Court of the State of California, in and for the County of San Diego, and have you then and there this Writ.

It is further ordered that the written return to this Writ be served and filed on or before the 15th day of September, 1952.

Witness the honorable Phil S. Gibson, Chief Justice of the Supreme Court of the State of California.

Attest my hand and the seal of said court, this 2nd day of September, 1952.

William I. Sullivan, Clerk of the Supreme Court. By  
Henry P. Crabtree, Deputy.

[fol. 31] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

RETURN TO ALTERNATIVE WRIT OF PROHIBITION BY WAY OF  
DEMURRER—Filed September 11, 1952

Come now respondent and the real parties in interest in the above-entitled matter, and do hereby make Return to the Alternative Writ of Prohibition heretofore issued by this Court by way of demurrer:

I

That neither the Petition for Writ of Prohibition filed in the District Court of Appeal in and for the Fourth Appellate District nor said Alternative Writ of Prohibition state facts showing that said petitioner is entitled to a Writ of Prohibition.

Luce, Forward, Kunzel & Scripps. By Fred Kunzel,  
Attorneys for Respondent and Real Parties in  
Interest.

[fol. 32] POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER

The pending action in the Superior Court was filed to partition the vessel "Liberty" by a majority of the owners of the vessel pursuant to Sections 752 to 801.15 of the California Code of Civil Procedure. The majority of the owners consists of all the owners with the exception of petitioner herein, who owns a 15% interest in the vessel.

The petition for writ of prohibition herein is sought upon the basis that a State Court does not have jurisdiction to partition a vessel. In support of this contention petitioner cites the case of *Fischer v. Carey*, 173 Cal. 185.

In the above cited case the appeal was from an order of the trial court appointing a receiver to operate the vessel upon complaint of minority owners of the vessel. The order of the trial court appealed from appears at page 186 of the decision as follows:

"to operate said vessel if it appears in the judgment of said receiver such operation can be done at a profit

and to preserve the vessel, her earnings and appurtenances until the further order of the court."

The complaint prayed for an accounting, for the appointment of a receiver, and for an order decreeing the sale of the vessel and a division of the proceeds ratably amongst the part owners. The Supreme Court reversed the order appointing the receiver and in so doing, the Court stated at page 159:

"... that the power of a state court does not go to the length here exercised, of appointing a receiver and decreeing a sale because of the differences over the management of the vessel which have sprung up between the legal owners of that vessel."

In our opinion the court reached the proper conclusion. Statements made by the court relative to partition are pure dictum. Inasmuch as the trial court made no order for partition. The court merely followed the ancient admiralty rule that the courts will not, upon petition of a minority owner, [Vol. 25] interfere with the management, control or operation of a vessel. The Admiralty Courts, so as to not allow a circumvention of the above rule, also have refused to partition a vessel on the petition of a minority owner and have stated that they would not partition except where the interests of the vessel are equal. The reason for this rule is that where the interests are equal and there is dissension between equal owners the vessel cannot be operated and therefore the court will partition to keep the vessel in operation.

"Cases of litigation or sale, for the purpose of partition, are also within the power of the American admiralty as they are of the European maritime courts, such jurisdiction being exercised only as between equal interests. A decree of partition or litigation cannot issue merely upon a libel *in rem*; it is essential that the co-owner be also sued and served in personam."

1 Benedict on Admiralty at page 158.

*The Red Wing*, 10 Fed. 2d 389:

"Inasmuch as Kordich and respondents are not co-partners or co-owners in the Red Wing in equal shares,



the subject-matter of this proceeding is not within the purview of admiralty, for the rule is generally and uniformly established by the Supreme Court that the jurisdiction of courts of admiralty in cases of joint owners having unequal interests is not and never has been applied to direct a sale upon any dispute as to the trade and navigation of the ship. *The Steamboat Orleans*, 11 Pet. 182, 9 L. Ed. 677; *Coyne v. Caples* (D.C.) 8 F. 638."

The Court in the case of *Fischer v. Carey*, in its stated reasons for the decision, fell in error in three particulars; one, in the assumption that a partition action is in rem; second, that all actions pertaining to a vessel are in rem; and third, that all admiralty actions are in rem.

A partition action is not an action in rem unless it is a partition of real property and brought within the purview of Section 749.1 of the California Code of Civil Procedure.

40 Am. Jr. 112, Sec. 134.

*"Unknown Persons.*—The statutes of many of the states authorize the process in suits for partition to be directed to unknown owners or to all owners and claimants, known and unknown, in certain contingencies therein designated, and to be served by the publication [fol. 34] thereof or of some notice requiring all persons to appear and disclose and assert their claims to the property. Wherever such statutes exist and have been complied with, the proceeding becomes one in rem, and is conclusive against all persons irrespective of the character or extent of their title."

An action in rem is where the object of the action is to determine the rights of the world in certain property. The distinction between an action in rem and an action in personam against a vessel is well stated by Judge Hughes in the case of *F. T. Rounds v. Cloverport Foundry & Machine Company*, 237 U. S. 203 (305 S. Ct. 596; 59 L. Ed. 966), wherein it is stated:

"As the last point is plainly well taken, it is unnecessary to go further. It is well settled that in an action in personam the state court has jurisdiction to issue an

ancillary attachment against the vessel, and, whether or not the contract in suit be deemed to be of a maritime nature, it cannot be said that the state court transgressed its authority. The proceeding in rem which is within the exclusive jurisdiction of admiralty is one essentially against the vessel itself as the debtor or offending thing,—in which the vessel is itself seized and proceeded on as the defendant, and is judged and satisfied accordingly. By virtue of dominion over the thing all persons interest in it are deemed to be parties to the suit; the decree binds all the world, and under it the property itself passes, and not merely the title or interest of a personal defendant."

See also *United States of Mexico v. Bach*, 118 U. S. 41 at page 49.

It has never been held that a state court or an admiralty court, for that matter, lacked jurisdiction to partition a vessel upon a request by the majority of the owners. Partition actions are favored in law and as such there exists no valid reason why an owner of a 15% interest in the vessel should be able to keep the owners of an 85% interest in the vessel from selling it if they feel that the reasons for the sale are valid.

#### 40 Am. Jr. 5, Sec. 4.

**Nature and Object.**—Partition is a right much favored, upon the ground that it not only secures peace, but promotes industry and enterprise. The rule of the [fol. 35] civil as of the common law that no one should be compelled to hold property in common with another grew out of a purpose to prevent strife and disagreement. Additional reasons are found, however, in the more modern policy of facilitating the transmission of titles, and in the inconvenience of joint holding. Partition proceedings enable those who own property as joint tenants, coparceners, or tenants in common, to put an end to the tenancy so as to vest in each a sole estate in specific property or an allotment of the lands or tenements. It contemplates an absolute severance of the individual interests of each joint owner, and after partition, each has the right to enjoy his estate without

supervision, let, or hindrance from the other. Unless this can be accomplished, then the joint estate ought to be sold, and the proceeds divided. Courts should be, and are, adverse to any rule which will compel unwilling persons to use their property in common."

Dated this 10th day of September, 1952.

Respectfully submitted, Luce, Forward, Kunzel & Scripps. By Fred Kunzel, Attorneys of Respondent.

[fol. 36] [File endorsement omitted]

IN SUPREME COURT OF THE STATE OF CALIFORNIA

[Title omitted]

ADDITIONAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION  
—Filed October 9, 1952

Pursuant to permission heretofore granted by this Honorable Court, petitioner submits the following additional points and authorities in support of his petition on file herein, and in answer to the Return and Demurrer of Respondent respectfully submits:

### Statement of Facts

Reference is made to the preliminary statement heretofore set forth in the petition on file herein. Briefly stated, however, the question involved appears to be:

Do the courts of the State of California have jurisdiction to order a sale of a certificated vessel and to order the proceeds of said sale partitioned between the parties according to their respective interests?

[fol. 37]

### I

#### ADMIRALTY JURISDICTION UNDER U. S. MARITIME LAW

It is to be noted that California, by Code, recognizes the jurisdiction of the admiralty courts in cases involving co-



owners and has failed to reserve jurisdiction to our state courts in such cases.

"If a vessel belongs to several persons, not partners, and they differ as to its use or repair, the controversy may be determined by any court of competent jurisdiction."

*Harbors and Navigation Code, Sec. 403.*

Section 9 of the Judiciary Act of 1789 and later statutes reenacting the same provision provides that the federal district courts shall have exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction "saving to suitors in all cases the right of a common law remedy where the common law is competent to give it."

This provision was amended in 1949 and now reads as follows:

"The district courts shall have original jurisdiction, exclusive of the courts of the States, of:

(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

(2) Any prize brought into the United States and all proceedings for the condemnation of property taken as prize. June 25, 1948, c. 546, 62 Stat. 931, amended May 24, 1949, c. 129, 479, 63 Stat. 101."

*TU. 26-USCA, Ch. 85, Sec. 1553.*

As the historical note to this section points out, the 1949 amendment, having to do with the "saving to suitors" clause, was changed by substituting the words "any other remedy to which he is otherwise entitled" for the words "the right of a common-law remedy where the common law [fol. 35] is competent to give it." The substituted language is simpler and more expressive of the original intent of Congress and is in conformity with Rule 2 of the Federal Rules of Civil Procedure abolishing the distinction between law and equity.

The question therefor presented is whether an action to partition a certificated vessel is an action that was cognizable at common law.

On three different occasions California, speaking through this Honorable Court, has passed upon the particular types of action presented to it for consideration and has determined in each case whether the particular action was one cognizable only in admiralty or whether at common law the action was recognized so as to allow the state court to take jurisdiction of the subject matter.

The first case to be presented to this Court passed upon the specific question as to whether the state court had jurisdiction of the subject matter of an action wherein the relief prayed for was the sale and ratable partition of proceeds. Thus, in the case of *Fischer v. Corey*, 173, Cal. 185 (1916) the court had before it an action wherein the plaintiffs, as minority owners of a vessel, commenced an action in equity because of the dissatisfaction of the employment of the vessel by the majority owners. The complaint prayed for an accounting, for the appointment of a receiver, and *for an order decreeing the sale of the vessel and a division of the proceeds ratably amongst the part-owners*. This Court made a critical examination of all of the authorities, including many state authorities holding to the contrary, and discussed with particularity the decisions of other state courts and language found in some of the federal decisions in which the particular state courts have taken it upon themselves to assume jurisdiction of similar actions, and concludes that the courts of the State of California, notwithstanding the authorities to the contrary, cannot assume jurisdiction of an action to partition a vessel.

*Fischer v. Corey*, 173 Cal. 185 (1916).

[fol. 39]. There is lengthy discussion in the *Fischer* case (*supra*) and in all of the authorities cited in that case to the effect that the admiralty rule applied will prevent a partition of a vessel where the interests are unequal. However, as pointed out in the *Fischer* case (*supra*), the federal cases examined, without exception, show that the federal courts have entertained jurisdiction of the subject matter of the action and that the judgments in each case were judgments upon the merits, denying the particular remedy sought. In other words, a distinction is made between the jurisdiction of the subject matter and the admiralty rule which is applied in each case of the cases.

The next case to come before this Honorable Court was the case of *Higgins v. Ede*, 204 Cal. 231 (1928). This was a case in which a vessel owned by co-owners as tenants in common became wrecked in the Gulf of California. The vessel was salvaged and repaired by the respondent and others as majority owners. The appellant, a minority owner, refused to pay any portion of the costs of salvage, and the action involved the rights of the parties as the result of the appellant's failure or refusal to pay his proportionate share of such costs. The respondent sought to establish a contractual relation with the appellant in which it was alleged that the appellant had agreed to either pay his proportionate cost or sell his interest to those owners who had paid their shares. It appears that the action was intended as one to compel appellant to sell his interest in the vessel to respondent and to the majority owners. This Court, on the authority of *Fischer v. Carey* (supra) held that the relief prayed for was in rem and not a common law remedy, and that the jurisdiction for the relief prayed for was vested exclusively in the United States District Court. The court, after an examination of the factual situation presented, goes further by saying that if the action be construed to be an [fol 40] action for the recovery of money, the proof falls short of the claim by respondents. The judgment of the lower court was thereupon reversed.

The third case to come before this Honorable Court was that of *Moore v. Purse Seine Net*, 18 Cal. (2d) 835 (1941). This case involved the right of the State of California to seize a fishing net in use on a fishing boat operating in navigable waters of the Pacific Ocean. The seizure was made under statutes of the State of California providing for the seizure and forfeiture of a vessel using appliances in violation of the Fish and Game Code. This Court examines the Judiciary Act and traces the history of admiralty jurisdiction in connection with cases of seizure back to the English common law and statutes. The sole question in the *Moore v. Purse Seine Net* case (supra) is stated at page 838 of the decision:

"It is therefore necessary to determine whether this forfeiture proceeding (underlining ours) by the state



is the type of action that was cognizable in a common law court."

*Moore v. Purse Seine Net*, 18 Cal. (2d) 835 (1941).

The court concludes that this type of action, namely, one of seizure, was an action that historically was cognizable in the court of common law and hence the state courts had jurisdiction. It is submitted, therefore, that the *Moore v. Purse Seine Net* case was decided upon the principle of the nature of the particular action before it and cannot be considered as authority for the proposition that the courts of the State of California have jurisdiction in all cases involving vessels. The case must therefore be limited in its scope to an action of forfeiture by the state, especially in view of the language of the court at page 838, which reads as follows:

"The fact that federal forfeiture statutes, similar to that of California, require that a proceeding thereunder against a vessel or its equipment be brought in a federal district court sitting as a court of admiralty (cases cited), does not prevent California from conferring jurisdiction upon her courts to proceed with such cases under a California statute if the type of [fol. 41] action is a traditional common law remedy."

*Moore v. Purse Seine Net*, 18 Cal. (2d) 835 (1941).

The court makes the further observation at page 842 indicating the limited scope of the case:

"It is therefore clear that the forfeiture of illegally used nets authorized by the California statute involves a traditional common law remedy cognizable in the state courts, even though the statute was enacted long subsequent to the Judiciary Act."

*Moore v. Purse Seine Net*, 18 Cal. (2d) 835 (1941).

It is to be noted that in the *Moore v. Purse Seine Net* case (supra) neither the *Fischer v. Carey* or *Higgins v. Eva* cases were discussed.

Respondent in this proceeding criticizes the case of *Fischer v. Carey*, stating that the court fell in error in three particulars: (1) In the assumption that a partition

action is in rem; (2) that all actions pertaining to a vessel are in rem; and (3) that all admiralty actions are in rem. To these criticisms we cannot agree. The court in that case carefully considered the relief prayed for and was considering the authorities in light of the prayer requiring the appointment of a receiver and a sale of the vessel with ratable partition of the proceeds. The court specifically states that no question arises over the jurisdiction of equity; for example, to enforce a lien, a contract for sale, or to a decree for an accounting as such. In the *Fischer* case the court even suggests that the state courts may retain jurisdiction of the action insofar as it addresses itself to the equitable consideration of settling accounts. But in unequivocal language, the court states as follows:

"But we hold that the power of a state court does not go to the length here exercised, of appointing a receiver and decreeing a sale because of the differences over the management of the vessel . . ."

*Fischer v. Carey*, 173 Cal. 185 (1916), at p. 198.

It is therefore submitted that the California cases are each consistent with reference to the particular actions submitted for consideration, and that the *Fischer v. Carey* case is determinative of the question here involved, to wit: That the Superior Court of the State of California has no jurisdiction of the subject matter of the present action.

Respectfully submitted, Levenson, Levenson & Block.  
By (S) Eli H. Levenson, Attorneys for Petitioner.

[fol. 43]

[File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA  
IN BANK

L. A. 32511

MANUEL S. MADEUGA, Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR  
THE COUNTY OF SAN DIEGO, Respondent

OPINION—FILED December 17, 1952

Co-owners representing eighty-five per cent of the interest in the Oil Screw Vessel Liberty, Official No. 256,332, docked at the City of San Diego, filed in the superior court in San Diego County a complaint for partition by sale of the vessel and distribution of the proceeds to all the co-owners. Manuel S. Madruga, the owner of the remaining fifteen per cent interest, named as defendant in the complaint, filed a demurrer stating among other grounds that the superior court had no jurisdiction of the subject matter and that exclusive jurisdiction was in the federal court. The respondent court overruled the demurrer and announced that it would proceed by requiring the defendant to answer the complaint. Thereupon the minority owner and defendant in the partition proceeding applied for the writ of prohibition directing the respondent court to refrain [fol. 44] from further proceedings. The alternative writ issued. The jurisdictional question is submitted on the petition and the demurrer thereto.

The action in the respondent court is one for partition by sale of the vessel as personal property and for distribution of the proceeds to the several co-owners in accordance with their stated individual interests, pursuant to sections 752a et seq. of the Code of Civil Procedure. It is alleged that there are no liens or encumbrances against the vessel. Partnership and accounting problems are not involved.

It is the petitioner's position that the jurisdictional question has been determined favorably to his contention by this court's decision in *Fischer v. Carey*, 1916, 173 Cal. 185.



The respondent seeks to distinguish that case as one involving minority owners and contends that the state has concurrent jurisdiction with the federal court by virtue of the saving clause in the federal Judicial Code.

Section 2 of Article III of the United States Constitution provides that the judicial power of the United States courts shall extend "to all cases of admiralty and maritime jurisdiction." The Act of Sept. 24, 1789, Sec. 9, c. 20 (1 Stat. at L. 73, 77, Jud. Code, Sec. 24 (3), 28 U. S. [fol. 45] Code 41 (3)), provided that the United States District courts should have "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." By decision this saving clause has been deemed to refer to the existing right to proceed against parties in personam, as in contract or tort. (See *North Pac. Steamship Co. v. Ind. Acc. Comm.*, 1917, 174 Cal. 346, workmen's compensation; *Higgins v. Eva*, 1928, 204 Cal. 231, action for proportionate share of cost of salvaging and repairing the vessel; *United States of Mexico v. Rask*, 1931, 118 Cal. App. 21, lien for repairs.) But it has been said that the right to proceed in rem is the distinctive remedy of admiralty and that neither Congress nor the state can confer jurisdiction upon the state courts to proceed in rem. (See *Benedict on Admiralty*, pp. 33 et seq.) It has been held that the proceeding to partition (licitation or sale) is one in rem, although also in personam by the necessity of requiring all co-owners to be joined. *Tucci v. Arbusto*, S. D. N. Y. 56 Fed. 2d. 666.)

Section 41 (3) of the Judicial Code was subsequently repealed and in 1942 section 1333 (28 U. S. C.) was substituted. [fol. 46] In 1949 Congress amended section 1333 (63 Stat. 101) to provide that the district courts have original jurisdiction exclusive of the state courts of any civil case of admiralty or maritime jurisdiction "saving to suitors in all cases all other remedies to which they are otherwise entitled." Thus at this time there is no necessity to resolve the question whether the reservation of the original section referred only to remedies known to the common law. The question is whether there is now available to co-owners of a vessel a partition proceeding in the state courts.

In *Fischer v. Carey*, *supra*, (173 Cal. 185) decided in 1916, it was concluded that the state court did not have concurrent jurisdiction in a partition proceeding commenced by minority co-owners. There the minority owners sought an accounting, the appointment of a receiver to operate the vessel, the sale of the vessel and a division of the proceeds. The trial court appointed a receiver to take possession of and to operate the vessel, and to preserve her and her earnings until the further order of the court. On the appeal the defendants' contention that the controversy was cognizable exclusively in the federal district court prevailed. This court held that on the facts equitable relief by way of accounting was merely incidental to the principal relief sought, [fol. 47] namely, the sale of the ship and a distribution of the proceeds; that it was essentially a proceeding in rem and thereby invaded the exclusive admiralty jurisdiction of the federal court. It was declared that admiralty had the sole power to say when and under what circumstances a vessel should be sold. It was pointed out that the federal policy controlling the exercise of that jurisdiction was to keep the vessel in employment and to that end permit the majority to determine the use or employment of the ship, since the remedy by stipulation and bond was given to the dissenting minority; that in admiralty usually partition was granted in a controversy between equal owners, but denied on the application of minority owners. In treating of a possible refusal of the majority to employ the vessel, the court pointed to language in *The Seneca*, 3 Wall. Jr. 395 (Fed. Case No. 12,670, involving equal owners), declaring that since the minority could not compel the majority to employ the vessel, the majority should not be permitted to keep the vessel idle to the injury of the minority and to the public detriment, hence the ship could be valued and sold. Reference was also made to *Story on Partnership*, p. 611 et seq., which was quoted to the effect that the general maritime law authorized a sale in admiralty in all cases where by reason of disagreement among the co-owners, the ship could not be employed whether or not there was an equality [fol. 48] in the dissenting interest. After an extensive review of decisional and text authority, it was said that the many declarations respecting the power in admiralty, whether on application of majority, equal or minority own-

ers, did not preclude a determination that jurisdiction resided in admiralty to entertain cases respecting sale, but that such declarations were to be taken as specifying when and how, in conformity with applicable policy and existing remedies, the jurisdiction would be exercised. (See and cf 48 Am. p. 78, sec. 106.)

Decisional law that admiralty has jurisdiction in partition by the sale of a vessel does not necessarily determine that the State does not have concurrent jurisdiction when the remedy therefor exists. On the contrary there is authority to the effect that the state has concurrent jurisdiction in equity to partition a vessel by sale when there is disagreement among the co-owners as to how the ship should be employed. The leading cases (*Andrews v. Betts*, 1876, 15 N. Y. Sup. Ct. Rep. (8 Hun.) 322), and others following it were treated in *Fischer v. Carey*, supra, 173 Cal. at p. 192 et seq. In *Andrews v. Betts* unequal owners sought partition and sale of a propeller operated under acts of Congress on the Hudson River. It was decided that concurrent state jurisdiction existed under state equity powers (as distinct [fol. 49] from any common law remedy) to decree partition and sale. That case was rejected in *Fischer v. Carey* because the common law provided no such remedy and partition in equity was therefore not a remedy reserved to suitors by the federal statute.

The answer here is resolved by the 1949 amendment to the Judicial Code saving to suitors all other remedies to which they are "otherwise entitled." The amendment clarifies the intent to preserve the state concurrent jurisdiction where a remedy is provided under state law which is available to the plaintiffs. In *Jordine v. Walling* (Nov. 1950) 185 Fed. 2d 662, it was recognized that amended section 1333 authorized state courts to entertain suits by seamen for maintenance and cure. It was pointed out that section 1333 was amended to conform with the decisions (as in *Andrews v. Betts*), to the effect that any competent court having jurisdiction of the parties was authorized to entertain a civil action for the enforcement of a right conferred by the maritime law where adequate relief might be given in the action. It follows that the state court is competent to decree ownership interests, sale of a vessel, and distribution of the proceeds, at least where the granting of the relief does not con-



dict with the federal maritime policy that the majority owners determine the use and employment of the vessel. Therefore the respondent court has power to proceed on [fol. 50] the petition of the majority owners here.

The peremptory writ is denied and the alternative writ is discharged.

Shank J.

We concur: Gibson, C. J.; Edmonds, J.; Carter, J.; Schauer, J.; Spencer, J.

I concur in judgment:

Traynor, J.

[fol. 51] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 52] SUPREME COURT OF THE UNITED STATES—OCTOBER TERM, 1952

[Title omitted]

ORDER EXTENDING TIME TO FILE PETITIONER FOR WRIT OF HABEAS CORPUS—March 5, 1953

Upon consideration of the application of counsel for petitioner,

It is ordered that the time for filing petition for writ of habeas corpus in the above-entitled cause be, and the same is hereby, extended to including April 17, 1953.

W. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 5th day of March, 1953.